

## **REMARKS**

For ease of reference, paragraph numbers used herein correspond to paragraph numbers utilized in the Non-final Office action mail dated December 15, 2008.

### **Claim Rejections under 35 USC §112, 2<sup>nd</sup> Paragraph**

4. Claims 15 and 27 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is respectfully traversed.

Specifically, the Office action notes that the claims attempt to define the subject matter in terms of the result to be achieved, and that the claims fail to define the technical feature of the ester produced from the fatty acid composition. The Office action further notes the ester produced could be any ester produced from the different fatty acids in the composition claimed and would include known esters.

In response, applicant notes that it is not required to provide any technical feature of the ester produced other than to define such ester, and the claims do define the ester. If the ester includes known esters, applicant very respectfully believes that a proper form of the rejection would be a 102 or 103 rejection with appropriate prior art cited.

6. Claims 1-33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over KRULL et al. (US 2002/0095857). The rejection is respectfully traversed.

The Office action cites KRULL et al. as disclosing low-temperature stabilized additives for fuel. The Office action notes the composition comprises tall oil fatty acid compositions comprising a mixture of saturated and unsaturated fatty acids and a sulfur content of up to 0.05 wt%. The Office action notes the proportion of saturated fatty acids is preferably less than 10 wt% and at least 90 wt% of the constituents consist of unsaturated fatty acids (paragraphs 00170026). The Office action refers to various examples disclosed by KRULL et al. which are noted to have a cloud point of between -27 and -37 degrees Celsius (Table 2). Reference is made to the composition of the tall oil fatty acid A1 comprises 30% of oleic acid (=C18;1), 60% of linoleic acid (=C18;2) and other polyunsaturated fatty acids and 4% of saturated fatty acids. The Office action notes the mixtures can be used alone or also together with other additives, for example with other pour point depressants or dewaxing auxiliaries, with corrosion inhibitors, antioxidants, sludge inhibitors, dehazers, conductivity improvers, lubricity additives and additives for lowering the cloud point. The Office action notes they are furthermore successfully employed together with additive packages which comprise, inter alia, known ash-free dispersion additives, detergents, antifoams and corrosion inhibitors. The Office action notes the additives according to KRULL et al. are preferably used in middle distillates which contain 0.05% by weight or less of sulfur, particularly preferably less than 350 ppm of sulfur, in particular less than 200 ppm of sulfur and in special cases less than 50 ppm of sulfur. The Office action states the position that the composition disclosed in the prior art clearly meet the limitations of the claimed composition when KRULL et al. discloses various saturated and unsaturated fatty acids.

In response, applicants notes that Claim 1 is patentable over Krull at least by the required “fatty acid composition comprising less than 3 % saturated fatty acids” (the cited Krull example has 4%), and /or more than 10 % C18;3 fatty acids (the Krull example appears to have less then 10%).

In view of the above Amendments and Remarks, prompt allowance of all pending claims is respectfully requested.

If it would be of any assistance in resolving any issues in this application, the Examiner is kindly invited to contact applicants' agent Mary A. Gilbreth, or applicants' attorney Mark Gilbreth at 713/227-1200.

Respectfully submitted,

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